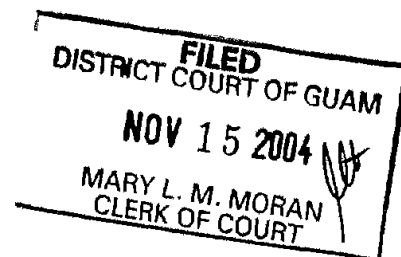


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Attorneys for Defendant
Government of Guam Retirement Fund



IN THE DISTRICT COURT OF GUAM

DAVID J. LUBOFSKY,

Plaintiff,

vs.

GOVERNMENT OF GUAM;
GOVERNMENT OF GUAM
RETIREMENT FUND,

Defendants.

CIVIL CASE NO. CIV04-00031

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT;
DECLARATION OF SERVICE**

Defendants answer the Plaintiff's Complaint as follows:

1. Defendants admit the averments in the following paragraph in the Complaint: 7.
2. Defendants deny the averments in the following paragraphs in the Complaint: 1, 8, 17, 18, 19, 20, 21, 23, 24, 25, 26, 28, 29, 30.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in the following paragraphs in the Complaint: 2, 3, 9, 11, 14.
4. As to paragraph 4 of the Complaint: Defendants admit the first sentence of the paragraph; Defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph.

5. As to paragraph 5 of the Complaint: Defendants admit that the Government of Guam Retirement Fund and the Government of Guam are public entities organized and existing under the laws of Guam; admit that the Government of Guam is organized and existing under the Organic Act; admit that the Defendants have their principal place of business in the Territory of Guam within this judicial district; Defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph.

6. As to paragraph 6 of the Complaint: Defendants admit that the Government of Guam and the Government of Guam Retirement Fund each employ in excess of 15 employees; Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph.

7. As to paragraph 10 of the Complaint: Defendants admit that Plaintiff was employed by the Guam Department of Education as a School Psychologist; Defendants are without sufficient knowledge or information sufficient to form a belief as to the truth of whether the Guam Department of Education is a line agency; Defendants deny the other averments in this paragraph.

8. As to paragraph 13 of the Complaint: Defendants admit that Plaintiff was employed by the Guam Department of Education in May 2001.

9. As to paragraph 15 of the Complaint: Defendants admit the first sentence of this paragraph; Defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph.

10. As to paragraph 16 of the Complaint: Defendants deny the first sentence of this paragraph; Defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments in this paragraph.

11. All averments in the Complaint that are not specifically admitted above are denied.

AFFIRMATIVE DEFENSES

1. The Plaintiff has failed to state a claim upon which relief can be granted.
2. As to the claim that disability retirement benefits have been denied, the Plaintiff has failed to exhaust his administrative appeal before the Retirement Board of Trustees.
3. The claims are bared by sovereign immunity.
4. The Plaintiff's claims for breach of contract and negligence are barred because the District Court of Guam does not have jurisdiction over these claims and sovereign immunity bars bringing these claims against the Defendants in the District Court of Guam.
5. The government of Guam has not waived sovereign immunity for contract and negligence claims against the Government of Guam Retirement Fund and, therefore, these claims are barred.
6. The Plaintiff's claims are not ripe for review.
7. The Plaintiff has failed to exhaust administrative prerequisites and remedies prior to filing suit under Title VII.
8. The Plaintiff is not entitled to exemplary and punitive damages against the Defendants.

WHEREFORE, Defendants pray for the following relief:

1. That the complaint be dismissed;
2. That the Plaintiffs take nothing by their Complaint;
3. For their costs;

4. For any other relief the Court deems just and proper.

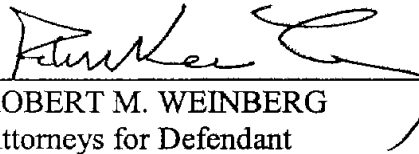
DATED: Hagåtña, Guam, November 15, 2004.

CARLSMITH BALL LLP



J. PATRICK MASON
Attorneys for Defendant
Government of Guam Retirement Fund

OFFICE OF THE ATTORNEY GENERAL



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DECLARATION OF SERVICE

I, J.Patrick Mason, hereby declare that on the 15th day of November 2004, I will cause to be served, via hand delivery, a true and correct copy of DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT; DECLARATION OF SERVICE, upon Plaintiffs' Counsel of record as follows:

A.Alexander Gorman, Esq.
LAW OFFIES OF GORMAN & GAVRAS
2nd Floor, J&R Building
208 Route 4
Hagåtña, Guam 96910

Executed this 15th day of November 2004 at Hagåtña, Guam.



J.PATRICK MASON